

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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DATED: 17-11-2005

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WRIT PETITION No.23081 OF 2005

Between:

The National Seeds Corporation Employees Union, Kurnool. . . . Petitioner

And

The Union of India, New Delhi, and others Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.23081 OF 2005

ORDER:

The petitioner is the Union of the workers, employed in the fourth respondent Corporation, which is a Government of India undertaking. Certain disputes arose and steps were initiated under the Industrial Disputes Act, for short "the Act", for conciliation of the dispute. Accordingly, the third respondent undertook conciliation but reported failure. The petitioner sought reference of the dispute to the Industrial Tribunal under the Act. For this purpose, an order of reference is necessary from the first respondent. The grievance of the petitioner is that though the third respondent reported failure and a request was made for making reference to the Industrial Tribunal, the first respondent did not move in the matter at all.

Heard the learned counsel for the petitioner and learned Additional Standing Counsel for the Central Government.

It is not in dispute that the first respondent is the appropriate Government in relation to the fourth respondent. Section 10 of the Act provides for reference of disputes to the Boards, Courts or Tribunals. The steps taken by the parties concerned for resolution of the dispute through conciliation under Sections 11 and 12 of the Act, failed. On receiving a report from the Conciliation Officer, under sub-section (4) of Section 12 of the Act, the first respondent is under obligation to examine the matter for the purpose of referring the dispute to the Industrial Tribunal or National Tribunal, as the case may be. Sub-section (5) of Section 12 of the Act mandates that if the first respondent does not intend to make such reference, it shall have to record and communicate the reasons

there for, to the parties.

The record discloses that the Conciliation Officer reported failure through his letter, dated 15-04-2005. Immediate steps ought to have been taken by the first respondent in the matter of reference of the dispute to the Industrial Tribunal as contemplated under Section 12(5) of the Act. The scope of the power and discretion of the appropriate Government in the matter of reference of disputes to the Courts was dealt with by the Supreme Court in **ORISSA TEXTILE AND STEEL LIMITED v. STATE OF ORISSA**. The obligation of the appropriate Government to refer the disputes to the concerned Tribunals under Sections 25-M(6) and 25-N(7) has been considered by this Court in **VOLTAS LIMITED, HYDERABAD UNIT v. GOVERNMENT OF ANDHRA PRADESH**, in the light of the judgment of the Supreme Court referred to above. It was held as under:

“Therefore, in the matter of dealing with the applications, seeking reference to the Industrial Tribunal under the relevant provision of Chapter-V-B, the Government has no option but, to accede to the request. In that view of the matter, the action of the Government, in refusing to refer the matters to the Industrial Tribunal cannot be sustained. But for the fact that there is no provision under the Act, which enables the aggrieved party to approach the Industrial Tribunal, this Court would certainly have permitted the petitioner to make its claim, before the Tribunal, in view of the judgment of the Supreme Court. Inasmuch as the reference is required to be made under the relevant provisions, the Government needs to be directed to accord such permission, without any further delay, since the lay off, is sought for a specific period and substantial part of it had already expired.”

It is true that the provisions of Section 12(5) of the Act are slightly different from those referred to above. However, the obligation of the first respondent to take a decision in the matter of referring the dispute in the event of failure of conciliation remains almost in the same lines. It cannot be permitted to sit over the matter indefinitely.

For the foregoing reasons, the writ petition is disposed of, directing that the first respondent shall pass an order in the matter of reference of the dispute

between the petitioner and the fourth respondent to the concerned Labour Court or Industrial Tribunal, within two weeks from today. In case the first respondent is of the view that there does not exist such a dispute, it shall pass a reasoned order as contemplated under Section 12(5) of the Act, within that time. There shall be no order as to costs.

(L.NARASIMHA REDDY, J)

17th NOVEMBER, 2005.

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